

FILED

JUN 25 2009

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY SP
DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

In re: Peter and Theresa Jokola,
Debtors, Appellees

CIVIL ACTION NO. W-09-CA-133

DOUGLAS LELAND BARR,
Appellant

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APPELLEES' RESPONSES TO
(1) APPELLANT'S MOTION TO REINSTATE CASE, and
(2) APPELLANT'S MOTION TO EXTEND TIME TO FILE BRIEF

TO THE HONORABLE U.S. DISTRICT JUDGE:

NOW COMES Peter and Theresa Jokola, Appellees, and file their Responses To (1) Appellant's Motion To Reinstate Case and (2) Appellant's Motion To Extend Time To File Brief, and in support thereof states as follows:

1. This appeal was docketed on May 26, 2009. Appellant's brief was due to be filed by June 9, 2009. When no brief was filed, the Court dismissed this appeal by order dated June 18, 2009. Appellant has now filed a Motion to reinstate the appeal, and a motion to extend the time to file its brief. For the reasons stated herein, both motions should be denied.

2. Rule 6 (b)(1)(B) of the Federal Rules of Civil Procedure allows the Court to extend the time to file Appellant's brief, but only if the failure to file the brief timely was the result of excusable neglect. In Appellant's motions, Appellant sets forth two reasons for his failure to file his brief timely: (A) the due date was calendared wrong by Appellant's counsel, and (2) Appellant's counsel, Phillip Arrien, has recently experienced chronic health problems. While Appellees are not unsympathetic to the health problems of Appellant's counsel, Phillip Arrien, and do not question in any way the statements made in Mr. Arrien's Affidavit about those health problems, Appellees would show that Appellant's explanations for failing to timely file its brief do not rise to the level of excusable neglect.

3. Appellant does not offer any explanation for the errant calendaring in his office of the due date for Appellant's brief. He simply states that "for reasons unknown" the date calendared was

June 19, 2009. There is no explanation of Appellant's calendaring policies or practices, nor any reasonable explanation of how or why such error occurred. Appellees would show that Appellant's statements in his pleadings do not show that Appellant's failure was the result of excusable neglect.

4. It is worth noting that despite the fact that Mr. Arrien was in the office, even if sporadically, from June 1 through June 11, the calendar error was not discovered by his office until June 19 when the appeal was dismissed by the Court. It would be reasonable to assume and expect that if the perceived deadline (even if erroneous) was June 19, someone in Mr. Arrien's office should have been preparing either the brief or a motion to extend time to file the brief in advance of June 19. Appellant has made no such allegation or offered any such explanation.

5. As shown on all of Appellant's pleadings, Mr. Arrien is one of two attorneys who serve as counsel for Appellant. Mr. Joseph Olson is the other attorney assisting Mr. Arrien on this case. Appellant has not offered any explanation as to why Mr. Olson did not timely file the brief, or prepare and file a motion to extend the time for same prior to June 19. It would also be reasonable to assume and expect that if Mr. Arrien was having significant health problems, and was out of the office as much as Mr. Arrien has stated, his co-counsel would be assisting on this case. However, Appellant has offered no such explanation in his pleadings.

6. For the reasons stated herein, Appellees would argue that Appellant has failed to sustain his burden of showing that his failure to timely file his brief was the result of excusable neglect, and therefore Appellant's motions should be denied.

WHEREFORE, Appellees respectfully request that the relief requested by Appellant be denied, and that Appellees be granted such other relief to which they may be justly entitled.

Respectfully submitted,



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Attorney for Appellees

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Appellees' Responses To (1) Appellant's Motion To Reinstate Case and (2) Appellant's Motion To Extend Time To File Brief was forwarded to the following parties via first-class mail, postage prepaid, on this 25th day of June, 2009:

Phillip F. Arien
Joseph D. Olson
6801 Sanger Avenue, Suite 140
Waco, TX 76710



David C. Alford

(.jokola.09.appealreinstate.res)

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**In re: Peter and Theresa Jokola,
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**DOUGLAS LELAND BARR,
Appellant**

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CIVIL ACTION NO. W-09-CA-133

**ORDER DENYING
(1) APPELLANT'S MOTION TO REINSTATE CASE, and
(2) APPELLANT'S MOTION TO EXTEND TIME TO FILE BRIEF**

On this date the Court considered the Appellant's Motion To Reinstate Case and Appellant's Motion To Extend Time To File Brief, and after reviewing the pleadings finds that said motions should be denied.

IT IS THEREFORE ORDERED AND DECREED that Appellant's Motion To Reinstate Case and Appellant's Motion To Extend Time To File Brief be and they are hereby DENIED.

SIGNED on this _____ day of _____, 2009.

WALTER S. SMITH, JR.
CHIEF, UNITED STATES DISTRICT JUDGE